

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1217

UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff

VS.

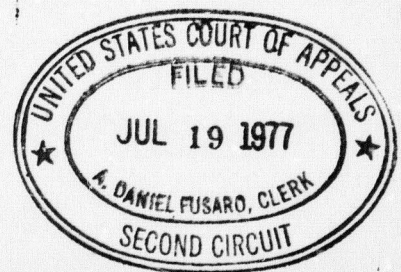
DANIEL BICHARA ZOGBI,
Defendant

Criminal Action No. 76-60-1

On appeal from the United States District Court
for the District of Vermont in Criminal Action No. 76-60-1.

APPENDIX FOR DEFENDANT-APPELLANT

TYLER & BRUCE
Attorneys for Defendant-Appellant,
120 North Main Street
St. Albans, Vermont 05478



PAGINATION AS IN ORIGINAL COPY

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PRESENT NO PRESENT NO PRESENT NO PRESENT NO	210 2 1007	VS ZOGBI, DANIEL BICHARA	08 19 76 60 1	U.S. MAG CASE NO	
U.S. TITLE/SECTION 22:1934		OFFENSES CHARGED Export weapons from US to Canada		ORIGINAL COUNTS 1	
II. KEY DATES & INTERVALS		SUPERSEDING COUNTS		BAIL • RELEASE	
ARREST of U.S. Custody Began * A8-11-76 Summons Served First Appearance		INDICTMENT ☒ High Risk Date Information ☐ 8-19-76 Indict. Waived ☐ In Charging District Superseding ☐ Indict/Info ☐		ARRAIGNMENT ☒ Trial Set For 1st Plea Final Plea Trial Began ☐ Trial Ended ☐	
SEARCH WARRANT Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT OFFENSE in Complaint		MAGISTRATE INITIAL APPEARANCE DATE 8-12-76 PRELIMINARY EXAMINATION OR REMOVAL HEARING DATE 8-19-76 DATE Held WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT ☒		OUTCOME HELD FOR G. OR OTHER PROCEEDING IN THIS DISTRICT ☒ HELD FOR G. OR OTHER PROCEEDING IN DISTRICT BELOW	
Exported from U.S. to Canada arms & implements of war					
U.S. Attorney or Agent Hughes Defense ☒ J.A. ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CC Edward J. Miller Robert G. Bliss, Esq. 524-2178 120 No. Main St., St. Albans, VT					

76

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
1976			
1 August 13		Filed Magistrate's Complaint; Warrant of Arrest returned served; Temporary Commitment; Bail Reform Act No. 2; Financial Affidavit; Appointment of Counsel and Petition for Bail Reduction.	
2 "	19	Indictment.	
"	"	Record of Grand Jurors concurring.	
3 "	"	Amended Bail Reform Act No. 2.	
4 "	"	Appearance Bond - 10% of \$30,000; \$3,000 cash.	
"	24	In open Court before Judge Coffrin, Robert G. Bliss, Esq. enters his appearance for defendant. Jerome O'Neill, Esq. for Government.	
"	"	Defendant present with his attorney for arraignment.	
"	"	Defendant was arraigned by Clerk and enters a plea of not guilty.	
"	"	Mr. Bliss moves for a reduction of bail.	
"	"	Ordered: Motion denied.	
"	"	Ordered: bail continued as previously fixed; all motions should be filed by September 14, 1976.	

DATE 1976		IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
		DOCUMENT NO.		Start Date (a)	End Date (b)	LT Code (c)	Total Days (d)
5	Sept. 14	Filed Deft's Motion to Dismiss.					
6	" "	" Deft's Memorandum in support of Motion to Dis-					
7	" "	miss. Affidavit of Deft. in support of Motion to					
8	" "	Dismiss. Affidavit of Byron Kennedy in support of Motion					
9	" "	to Dismiss. Deft's Motion for Discovery.					
10	" "	" Deft's Memorandum in support of Motion for Dis-					
11	" 30	covery. Filed Government's response to motion for discovery					
12	" 30	and memorandum in support. Filed Government's opposition to motion to dismiss					
		and memorandum in support.					
Nov. 9		Hearing continued to 11-15-76 at deft. atty's request.	3	11-9-76		T	6
* " 15		In Chambers before Judge Coffrin, Jerome O'Neill,	3	11-15-76		T	
		Esq. for Government; Robert Bliss, Esq.	3	11-15-76		A	
		for defendant.					
" "		Mr. Bliss moves that Court allow defendant to					
" "		submit to a psychiatric examination.					
" "		Ordered: that psychiatric examination be allowed					
" "		to determine the mental capacity of the					
" "		defendant.					
✓ " "		In Court, hearing on defendant's motion for					
" "		discovery.					
" "		Ordered: Motion granted.					
" "		Hearing on defendant's motion to dismiss.					
" "		Ordered: Motion denied.					
" "		(Tentative trial date December 14, 1976)					
13 Nov. 24		Filed order granting defendant's counsel's oral					
		motion that the Court order a psychiatric					
		examination of the defendant to determine					
		his present state of mental competency.					
		William A. Woodruff, M.D. to examine					
		defendant on December 14, 1976, at 1:30 PM;	3	11-24-76		A	9
		a report of the results of said examination					
		shall be filed with the Court as soon as					
		possible after the completion thereof.					
		Copy mailed to attys. & Dr. Woodruff.					
4 Dec. 27		Filed Govt's Notice of Readiness.					
1977							
Jan. 28		In Chambers before Judge Coffrin, informal conference					
" "		held. Jerome O'Neill, Esq. for Government;					
" "		Edward J. Tyler, Esq. for defendant.					
" "		Statements made by Mr. Tyler and by Mr. O'Neill					
" "		re defendant's prospective witness.					
" "		Court to make determination as to whether witness					

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

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DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
Jan. 28	Kennedy will testify on behalf of defendant.				
Jan. 31	Filed Opinion and Order -- Byron Frederick Kennedy is hereby permitted to enter the U.S. and District of Vermont for the purpose of voluntarily testifying in this cause and he shall be free from arrest on any federal charges pre-existing the date of his entry. The U. S. Attorney and U. S. Marshal shall take all steps necessary to assure that the foregoing order is carried out in all respects. Copy mailed to attys. and delivered to U. S. Marshal.				
Feb. 1	In open Court before Judge Coffrin, trial by jury begun. Jerome O'Neill, Esq. for Government; Edward J. Tyler, Esq. for defendant.				
" "	A jury was impaneled by the Clerk.				
" "	Ordered: that one alternate be impaneled.				
" "	Jury excused. Court states that all witnesses will be excluded from the Courtroom, except for the case agent and Mr. Zogbi, Sr. (deft's father).				
" "	Hearing on defendant's motion for discovery.				
" "	Ordered: Government to comply only as to such written or recorded statements made by defendant which can be inspected or copied.				
" 1	Filed Government's requests to charge and trial memorandum.				
" "	Jury present -- The oath to Petit Jurors in criminal cases was administered to jury by Clerk.				
" "	Opening statements were made to the jury by Mr. O'Neill and by Mr. Tyler.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Larry J. Davis, Ira Trast, Paul DuCuennois, Michel Dussault, John Dunnigeen.				
" 2	Trial resumed.				
" "	The following witnesses, sworn by Clerk, were examined for Government: James Demetrules, Alfred D. Vallee and Frank J. Kopeski, Jr.				
" "	(Jury excused) At 11:15 AM, Government rests.				
" "	Mr. Tyler on behalf of defendant moves for a judgment of acquittal.				
" "	Ordered: Motion overruled.				
" "	Jury present. Daniel B. Zogbi, sworn by Clerk, was examined for defendant.				
" "	Filed Government's supplemental request to charge.				
" "	At 3:45 PM, defendant rests.				
" "	Richard F. Mercier, sworn by Clerk, was examined for Government in rebuttal.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE DELA		
	(Document No.)	(a)	(b)	(c)
Feb. 2	The following witnesses were recalled and examined for Government in rebuttal: Frank Kopeski and Paul Du Cuennois.			
" "	At 4:20 PM, Government rests in rebuttal.			
" "	Defendant rests. Evidence closed.			
" "	In Chambers, Mr. Tyler renews his motion for judgment of acquittal.			
" "	Ordered: Motion denied.			
" 3	Trial resumed.			
" "	Opening arguments were made to the jury by Mr. O'Neill and by Mr. Tyler.			
" "	Closing arguments were made to the Court by Mr. O'Neill.			
" "	Ordered that Harvey Lawrence be appointed as Foreman of the jury.			
" "	At 10:35 AM, Court commences the charge to the jury concluding at 10:55 AM.			
" "	Ordered: that the alternate be discharged.			
" "	At 11:00 AM, the jury retires to deliberate the case.			
" "	At 4:00 PM, the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.			
" "	At 5:40 PM, the jury come into Court and report a verdict of guilty.			
" "	Mr. Tyler moves that jury be polled.			
" "	Ordered: that the jury be polled by Clerk.			
" "	Jury excused.			
" "	Ordered: that presentence investigation be made.			
" "	Mr. O'Neill moves to increase bail from \$ 3,000 to \$ 10,000(cash).			
" "	Ordered: Motion denied; bail to remain as previously fixed pending sentence.			
3. Apr. 4	Filed Notice of Readiness of Presentence Investigation Report.			

COPY

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

FILED
AUG 19 11 15 AM '76
CLERK
DEPUTY CLERK Chau

UNITED STATES OF AMERICA)
)
 v.) 22 C.F.R. §§123.01, 123.53
) 22 U.S.C. §1934
 DANIEL BICHARA ZOGBI)

The Grand Jury charges:

On or about the 28th day of July, 1976, in the District of Vermont, DANIEL BICHARA ZOGBI, the defendant, did knowingly, willfully and unlawfully export from the United States to Canada arms and implements of war, designated by the United States Munitions List 22, C.F.R. §121.01, without having filed a shippers export declaration with a U.S. Customs officer in accordance with Title 22, Code of Federal Regulations, §123.53(a); in violation of Title 22, United States Code, §1934.

/s/ MAXWELL EATON, SR.
Foreman

GEORGE W. F. COOK
United States Attorney

By /s/ JOHN R. HUGHES, JR.
JOHN R. HUGHES, JR.
Assistant U. S. Attorney

August 19, 1976
(Burlington)

CHARGE

THE COURT. Ladies and Gentlemen of the Jury:
I am going to appoint Mr. Lawrence as your Foreman in this matter.

This case is a criminal proceeding brought by the United States against Daniel Bichara Zogbi. The Government commenced this proceeding by an indictment which charges that on or about July 28, 1976, the defendant, in the District of Vermont, did knowingly, willfully and unlawfully export from the United States to Canada arms and implements of war, designated by the United States Munitions List printed in Title 22, Code of Federal Regulations, Section 121.01, without having filed a Shipper's Export Declaration with a United States Customs Officer in accordance with Title 22, Code of Federal Regulations, Section 123.53 (a); in violation of Title 22, United States Code Section 1934.

Your verdict should not be influenced by the fact that the defendant was indicted for this offense by the Grand Jury. An indictment is merely a formal procedural method of accusing a defendant of a crime preliminary to trial. Therefore, the indictment is not evidence of any kind against the defendant and does not create any presumption or permit any inference of the defendant's guilt.

The defendant has pleaded not guilty to the charge in the indictment. You have been chosen and sworn as

jurors in this case to determine the issues of fact presented by the allegations of the information and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice to any party.

The law presumes a defendant to be innocent of a crime with which he is charged. This presumption of innocence continues throughout the trial down to the time in the jury room, if that time in fact arrives, when you are satisfied from all the evidence, beyond a reasonable doubt, that a defendant is guilty of the crime charged. The law permits nothing but legal evidence presented before this jury to be considered in support of the charges against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the guilt of the defendant from all the evidence in the case.

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case, but first I would like to call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against the defendant beyond a reasonable doubt. You cannot find a defendant guilty unless you determine that the Government has established by the evidence each and every essential element of the crimes charged

against him beyond a reasonable doubt. However, to support a verdict of guilty you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt you are not to understand that all doubt is excluded. It is rarely possible to prove anything to an absolute certainty. A reasonable doubt means substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth is conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. I stress to you that the law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence and, since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the Government.

If after impartial consideration of all the

evidence, you can candidly say that you are not satisfied of the guilt of the defendant beyond a reasonable doubt, you should find the defendant not guilty. Conversely, if you are satisfied of his guilt beyond a reasonable doubt, you should find the defendant guilty.

There are two types of evidence which a jury may consider in determining whether or not a defendant is guilty as charged. One is direct evidence such as the testimony of an eye witness. The other is circumstantial evidence which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. On the other hand, if all the evidence in the case satisfies you beyond a reasonable doubt of the defendant's guilt, you should find him guilty.

Circumstantial evidence is legal and proper for you to consider, and you may convict the defendant upon this class of evidence alone if you are persuaded beyond a reasonable doubt of his guilt. To do so, however, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed and that the defendant is guilty of its commission.

You will recall that counsel in this matter have stipulated or agreed as to certain facts. You must accept such stipulations as evidence and regard the stipulated facts as proved.

Any testimony which has been excluded or which has been stricken from the record is not evidence in the case, and you will entirely disregard it in arriving at your verdict. Likewise, the arguments of the attorneys and any statements which they made in their arguments are not evidence, and will not be considered as evidence by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses, the stipulations of counsel and all exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys' statements as to what that testimony was which will control you in reaching your decision. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from facts which you find have been proved such reasonable inferences as are justified in the light of your own experience.

If you feel that witnesses differed as to what the facts were, it is generally better to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth. But if

you cannot so reconcile the testimony, then you must determine, from all the evidence before you, which of the witnesses is entitled to greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give the testimony of each witness just such weight, just such credit, and have just such faith in it as you think it is fairly entitled to receive. Consider the appearance of the witnesses on the stand; their candor or lack of candor; their feeling or bias, if any; their interest in the result of the trial and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper. You should weigh the testimony of the defendant as a witness in light of the tests that I have just given you, keeping in mind, however, that he is the defendant and has a deep personal interest in the result of the trial.

A witness is presumed to speak the truth but if you reach the conclusion that a witness in the case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of his or her testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

The indictment charges a violation of 22 United States Code Section 1934 and 22 Code of Federal Regulations Sections 123.53(a) and 121.01. Section 1934 has now been replaced by Section 2778 of the same title of the United States Code. Section 2778 for the purposes of this trial is virtually identical to Section 1934 and this change will have no effect on your consideration of this matter. Section 2778 authorizes the President to control the import and export of defense articles and to designate those items which shall be considered defense articles. The list of defense articles is called the Munitions List. The President is further authorized to promulgate regulations concerning the import and export of such items. Defense articles has the same meaning as arms and implements of war as those terms are used in the indictment. I will use the terms arms and implements of war rather than the term, defense articles, since the former are used in the indictment.

Sections 123.53 and 121.01 of Title 22 of the Code of Federal Regulations are regulations issued by the Secretary of State for the President under the authority of Section 2778 of Title 22 of United States Code. Section 121.01 of Title 22 of the Code of Federal Regulations is the United States Munitions List, which defines the objects that are considered to be arms, ammunition, and implements of war. Subsection (a) of Section 123.53 of the Code of Federal Regula-

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tions provides that a Shipper's Export Declaration shall be filed with a United States Customs Officer before the arms, ammunitions and implements of war are actually shipped for export. The form prescribed by the Secretary of State for the filing of a Shipper's Export Declaration is the U. S. Department of Commerce Form 7525-V.

Section 2778 of Title 22 of the United States Code provides that whoever willfully violates any of the statutory provisions or regulations referred to above shall be guilty of an offense against the United States.

In this regard, I remind you that the defendant is charged only with willfully exporting arms and implements of war from the United States to Canada without filing a Shipper's Export Declaration. He is charged with no other offense. The offense alleged in the indictment is the only one that you should consider in your deliberations.

There are three essential elements that the Government must prove beyond a reasonable doubt in order to establish the offense charged in the indictment.

First, that on or about July 28, 1976, the defendant, Daniel Bichara Zogbi, exported from the United States to Canada arms and implements of war as so designated by the United States Munitions List.

Second, that the defendant failed to file a Shipper's Export Declaration with a United States Customs Of-

ficer as required by the pertinent statute and regulations.

Third, that the defendant acted knowingly and willfully.

With respect to the first element of the offense, the Government is required to prove beyond a reasonable doubt that the defendant exported from the United States to Canada arms and implements of war as so designated by the United States Munitions List. You may consider in your deliberations the stipulation of counsel for Mr. Zogbi and the Assistant United States Attorney that certain arms parts admitted into evidence are designated as arms and implements of war on the United States Munitions List. As used here, the term export means the sending or taking out of the United States in any manner any article, or equipment on the United States Munitions List, and the term United States as used in the definition of export, of course, is in the geographical sense.

With respect to the second element of the offense, the Government must prove beyond a reasonable doubt that the defendant failed to file a Shipper's Export Declaration as required by 22 United States Code Section 2778 and 22 Code of Federal Regulations Sections 121.01 and 123.53. Such a declaration is required in connection with the commercial exportation of arms. You will recall that counsel have stipulated that no Shipper's Export Declaration relative to the

arms in issue here was filed by the defendant.

The final element which the Government must prove beyond a reasonable doubt is that the defendant acted knowingly in exporting the arms, and that he acted willfully in failing to file the required Shipper's Export Declaration.

An act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident, mere negligence or other innocent reason. In this case, in order to find that the defendant acted knowingly in exporting the arms, you must find that he carried the arms out of the United States voluntarily and purposely, not accidentally or ignorantly.

You must also find that the defendant acted willfully in failing to file the Shipper's Export Declaration with regard to arms he may have exported. An act is willfully done, if it is done knowingly and deliberately. A failure to act is done willfully if it is done voluntarily and intentionally and with specific intent to fail to do something the law requires. In this case, in order to find the defendant guilty of a willfull failure to file the Declaration you must find that he knew that the Shipper's Export Declaration was required to be filed, and that he intentionally and deliberately failed to comply with that requirement or acted in deliberate disregard of the requirement.

In this regard, it is not necessary for the

Government to prove that the defendant knew that the law imposed a duty upon him to file a report of his exportation of the arms. Unless and until outweighed by evidence in the case to the contrary, there is a presumption that every person knows what the law requires to be done. However, evidence that the defendant acted or failed to act because he was ignorant of the law may be considered by you in determining whether or not he acted or failed to act with specific intent to disobey the reporting requirement, as charged in the indictment.

Again, I want to suggest to you that while the law is for the Court, and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence or pleadings is only for the purpose of making application of the principles of law to the issues in this case and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you to determine.

The parties have a right to expect in this case that you will duly deliberate and that you will reach a fair, just, and impartial verdict based on the evidence in the case.

The exhibits which have been admitted into evidence during the trial are for your consideration in your deliberations, and we will send the exhibits to you in the Jury Room. However, at the present time it is not my intention to

send the arm parts and the ammunition into the Jury Room, although, if you think they are necessary for your deliberations, and so request, we will see they are delivered to you.

Your verdict must be unanimous and will be delivered orally by your Foreman in response to inquiries made by the Clerk.

(At the bench.)

MR. O'NEILL. Government has nothing, your Honor.

MR. TYLER. The only one the defense has, your Honor, is that from the charge there is a presumption that the defendant knows the law. I feel this flies in the face of the statute which says it must be done knowingly and could serve to confuse the jury.

THE COURT. Noted.

(End of exceptions to the charge.)

THE COURT. Will the Marshals come forward and be sworn.

(The Marshals were duly sworn.)

THE COURT. Mr. Nelson, at this time we will excuse you and thank you very much for your services throughout this matter down to this point, and the remaining ladies and gentlemen may now take the case. We will stand in recess.

(Jury retired at 10:53 a.m.)

(In chambers at 2:25 p.m.)

declaration form, and I just feel---

THE COURT. I think they are entitled to know DuCuennois didn't tell him that, but if Mr. Davis did say that specifically, I think they are entitled to have that read to them.

MR. O'NEILL. The distinction is, Mr. Zogbi had to stop at Customs specifically with Mr. Davis who said "You have to fill out a Shipper's Export Declaration".

THE COURT. They are entitled to know Mr. DuCuennois didn't say; it was only Mr. Davis.

(Jury entered the courtroom at 4:40 p.m.)

THE COURT. Ladies and gentlemen. We have come up with the following which we believe answers your first note, and I will ask the reporter to read that.

(The reporter read the requested testimony.)

THE COURT. Of course, ladies and gentlemen, you will keep in mind Mr. Zogbi denied he was advised with reference to the Shipper's Export Declaration during the July 25th incident. Does that answer your inquiry?

FOREMAN LAWRENCE. I believe it will.

THE COURT. I will give you, at this time, a brief supplemental charge. It may be of assistance to you.

SUPPLEMENTAL CHARGE

THE COURT. This is an important case. This trial has been expensive in time, effort and money. An in-

ability on your part to agree upon a verdict means that this matter will have to be disposed of at a later time. A trial at another day will result in additional delay and further expense in arriving at a final decision. There is no reason to believe that the case can be tried again, by either side, better or more exhaustively than it has been tried before you. A future jury will be selected in the same manner and from the same source that you were selected. Accordingly, there is no reason to believe that the case would ever be submitted to twelve men and women more conscientious, more impartial, or more competent to decide it, or that more or clearer evidence could be produced on behalf of either side.

You should not surrender your honest convictions as to the weight or effect of the evidence, solely because of the opinion of other jurors or for the mere purpose of returning a verdict. However, it is your duty as jurors to consult with one another, and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but you should do so only after a consideration of the evidence in the case with your fellow jurors and giving their opinions due weight. In the course of your deliberations, you should not hesitate to re-examine your own views and change your opinion if you are convinced it is erroneous.

In order to bring twelve minds to a unanimous result,

you must confer with candor and frankness, and with proper deference to and regard for the opinions of each other. That is to say in conferring together, each of you should pay due attention and respect to the views of the others, and listen to each other's arguments with a disposition to re-examine your own views.

If much the greater number of you are for a conviction, each dissenting juror ought to consider whether a doubt in his or her own mind is a reasonable one, since it makes no effective impression upon the minds of so many equally conscientious fellow jurors, who bear the same responsibility, serve under the same oath, and have heard the same evidence, we may assume, with the same attention and an equal desire to arrive at the truth. On the other hand, if a majority or even a lesser number of you are for acquittal, other jurors ought seriously to ask themselves again, and most thoughtfully, whether they do not have reason to doubt the correctness of a judgment, which is not concurred in by many of their fellow jurors, and whether they should not distrust the weight and sufficiency of the evidence which fails to convince the minds of their fellows beyond a reasonable doubt.

You are not partisans. You are judges -- judges of the facts. Your sole interest here is to seek the truth from the evidence in the case. You are the exclusive judges of the credibility of all the witnesses, and of the

weight and effect of all the evidence. In the performance of this high duty you are at liberty to disregard all comments of both court and counsel, including, of course, the remarks I am now making.

Remember, at all times, that no juror is expected to yield a conscientious conviction he or she may have as to the weight or effect of the evidence. But remember also that after full deliberation and consideration of all of the evidence in the case, 't is your duty to agree upon a verdict, if you can do so without violating your individual judgment and your conscience.

You may now retire and continue your deliberations. I suggest you re-examine and reconsider the evidence in the case, and if you can reach a verdict, based on your unanimous, good and conscientious judgment as reasonable men and women, you should do so.

We'll stand in recess.

(Court recessed at 4:50 p.m.)

(In Full Court at 5:40 p.m.)

THE COURT. Madam Clerk.

DEPUTY CLERK CURRAN. Mr. Foreman, has the Jury reached a verdict?

FOREMAN LAWRENCE. Yes, we have.

DEPUTY CLERK CURRAN. What is the verdict of the Jury?

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Allen W. Coffey

Date April 11, 1977

CERTIFIED AS A TRUE COPY ON
Filed Apr. 11, 1977

THIS DATE

By *Therese Quinn*

() CLERK

(X) DEPUTY

BEST COPY AVAILABLE

United States of America vs.

United States District Court for
DISTRICT OF VERMONT

DEFENDANT

Daniel Bichara Zogbi

DOCKET NO. ➤ Cr. 76-60-1

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
4 11 77

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Edward J. Tyler, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of

violation of Section 1934 of

Title 22, United States Code.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

one

SENTENCE
OR
PROBATION
ORDER

year. Execution of sentence is suspended with exception of sixty days which is to be served in a jail type institution and defendant is placed on probation for a period of three years to commence upon release from confinement. Sentence to run concurrently with sentence imposed in Criminal No. 76-79-1.

CONDITIONS

SPECIAL
CONDITIONS
OF
PROBATION

1. Defendant is not to enter the United States unless by permission of the Immigration officials.
2. Defendant is not to possess, buy, sell or otherwise deal in firearms procured directly or indirectly from any firearms dealer or source in the United States.
3. Defendant shall obey all local, state and federal laws and comply with rules and regulations of the Probation Department.

BEST COPY AVAILABLE

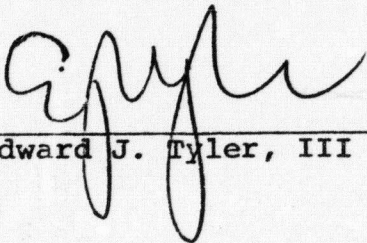
ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends

CERTIFICATE OF SERVICE

I, Edward J. Tyler, III, Esq., of the firm of Tyler & Bruce, do hereby certify that service of the foregoing Appendix for Defendant-Appellant was made on George W. F. Cook, United States Attorney, by mailing to him a copy thereof, at his address at Rutland, Vermont, by first class mail, postage prepaid on July 15, 1977.



Edward J. Tyler, III